

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of)

ADJUSTMENT OF THE RATES FOR)
NONCOMMERCIAL EDUCATIONAL)
BROADCASTING COMPULSORY LICENSE)

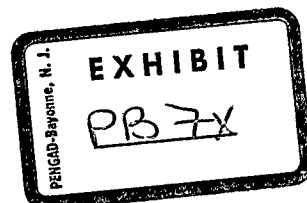
Docket No. 96-6 CARP NCBRA

JOINT PROPOSAL OF THE AMERICAN SOCIETY
OF COMPOSERS, AUTHORS AND PUBLISHERS,
THE NATIONAL FEDERATION OF COMMUNITY
BROADCASTERS AND THE NATIONAL RELIGIOUS
BROADCASTERS MUSIC LICENSE COMMITTEE

The American Society of Composers, Authors and Publishers ("ASCAP"), the National Federation of Community Broadcasters ("NFCB") and the National Religious Broadcasters Music License Committee formerly known as the National Religious Broadcasters Noncommercial Radio Music License Committee ("NRBMLC") submit this joint proposal for compulsory license fees to be paid by those noncommercial educational radio stations which are not licensed to colleges or universities, which are not members of National Public Radio, and which are not otherwise licensed by ASCAP, for the performance of copyrighted musical compositions in the ASCAP repertory.

ASCAP, NFCB AND NRBMLC

ASCAP, a performing rights society, licenses, on a non-exclusive basis, the right of nondramatic public performance of its members' copyrighted musical compositions, as well as such right in the copyrighted musical works created and owned by foreign writers and publishers who are members of affiliated



foreign performing rights societies.

NFCB is a national membership organization representing over 85 independent, community based noncommercial radio broadcasters and more than 96 associated college and university noncommercial radio stations¹. NRBMLC represents noncommercial educational radio broadcasters that are associated as members of National Religious Broadcasters.

BACKGROUND

In 1978, the Copyright Royalty Tribunal (the "Tribunal") held proceedings for the determination of compulsory license fees to be paid by public broadcasting entities entitled to a compulsory license for the performance of copyrighted musical compositions, pursuant to 17 U.S.C. § 118. Among those public broadcasting entities were noncommercial educational radio stations which were not licensed to colleges or universities and which were not members of National Public Radio ("community radio stations"). See generally 43 Fed. Reg. 25,068 (June 8, 1978). The Tribunal fixed the annual fee to be paid to ASCAP by community radio stations for their performance of copyrighted musical compositions in the ASCAP repertory in differing amounts; stations with no more than 20 watts transmitting power were to \$180 annually; stations with more than 20 watts transmitting power were to pay \$450 annually; and both fees were subject to an

¹As discussed below, these college and university stations are not included in the joint proposal.

annual cost-of-living adjustment. 43 Fed. Reg. 25,069, 25,071, 25,073; 37 CFR §§ 304.6, 304.10 (1978).

That Tribunal determination was effective through December 31, 1982. In the 1982 Noncommercial Broadcasting Rate Adjustment Proceedings (Docket No. 82-2), the Tribunal set a new schedule of annual fees for community radio stations for the five year period January 1, 1983 through December 31, 1987. The differential in fees based on transmitting power was discarded, and a single, flat fee was set for all community radio stations. That fee was \$180 for 1983, increasing annually in \$10 increments to \$220 for 1987. 47 Fed. Reg. 57,923 (December 29, 1982), as amended, 48 Fed. Reg. 22,715 (May 20, 1983); 37 C.F.R. § 304.6 (1983).

In the 1987 Noncommercial Broadcasting Rate Adjustment Proceeding (Docket No. 87-4-PBRA), ASCAP, NFCB and NRBMLC made a joint proposal to the Tribunal to adjust the rates that apply to community radio stations. See 52 Fed. Reg. 44,610 (November 20, 1987). We made that joint proposal, rather than submit a voluntary agreement, because NFCB and NRBMLC do not represent all community radio stations and, as a technical matter, do not have the authority to bind their members. Id. at 44,611. The Tribunal adopted our joint proposal and set a schedule of annual fees for community radio stations for the five year period January 1, 1988 through December 31, 1992. That fee was \$230 for 1988, \$240 for 1989, \$250 for 1990, \$265 for 1991 and \$280 for

1992. Id.; 52 Fed. Reg. 49,010 (December 29, 1987); 37 C.F.R. § 304.6 (1987).

Further, in the 1987 proceeding, the Tribunal adopted the following statement in its determination:

In proposing to adopt the joint proposal, the Tribunal recognizes that the joint proposal does not reflect any assessment by any of the parties of the absolute or relative value of the right of performance of music in the ASCAP repertory by community radio stations.

52 Fed. Reg. at 44,611.

Similarly, in the 1992 Noncommercial Broadcasting Rate Adjustment Proceeding (Docket No. 92-2-PBRA), ASCAP, NFCB and NRBMLC also made a joint proposal to the Tribunal to adjust the rates that apply to community radio stations. See 57 Fed. Reg. 55494, 55496 (November 19, 1992). Again, we made that joint proposal, rather than submit a voluntary agreement, because NFCB and NRBMLC do not represent all community radio stations and, as a technical matter, do not have the authority to bind their members. As in the past, the Tribunal adopted our joint proposal and set a schedule of annual fees for community radio stations for the five year period January 1, 1993 through December 31, 1997. That fee was \$295 for 1993, \$310 for 1994, \$325 for 1995, \$340 for 1996 and \$360 for 1997. Id.; 57 Fed. Reg. 60954 (December 22, 1992).

At our request the Tribunal adopted the above-quoted statement also adopted in the 1987 Noncommercial Broadcasting

Rate Adjustment Proceeding in its determination. 57 Fed. Reg. at 55496.

Congress abolished the Tribunal on December 17, 1993. Copyright Royalty Tribunal Reform Act of 1993 ("CRT Reform Act"), Pub. L. 103-198, 107 Stat. 2304. Pursuant to the CRT Reform Act, Congress directed the Copyright Office (the "Office") and Library of Congress to adopt the rules and regulations of the Tribunal found in chapter 3 of 37 C.F.R.; the Office subsequently reissued the Tribunal regulations on December 22, 1993. 17 U.S.C. § 802(d) 802(d); 58 Fed. Reg. 67690 (December 22, 1993). The Office also renumbered former 37 C.F.R. § 304.6 (which established terms and rates of license agreements for community radio stations) as 37 C.F.R. § 253.6. 59 Fed. Reg. 23993 (May 9, 1994).

In accordance with the statute, the Office published notice of this proceeding to set rates for the five year term from January 1, 1998 through December 31, 2002. See 61 Fed. Reg. 54458 (October 9, 1996).

THE ASCAP-NFCB-NRBMLC PROPOSAL

Once again, ASCAP, NFCB and NRBMLC have reached agreement on a joint proposal. As in 1987 and 1992, ASCAP, NFCB and NRBMLC are making this joint proposal to the Librarian, rather than entering into a voluntary agreement, because NRCB and

NRBMLC represent some, but not all, community radio stations.² Accordingly, any voluntary license agreement into which ASCAP, NFCB and NRBMLC might enter, pursuant to 17 U.S.C. § 118(b)(2), would not serve to resolve these proceedings insofar as all community radio stations are concerned.

ASCAP, NFCB and NRBMLC are, therefore, jointly proposing a compulsory license fee for all community radio stations, which the Librarian may adopt. Such adoption would make further proceedings, including hearings, unnecessary for these stations insofar as their performance of ASCAP music is concerned.

We propose that the Librarian set the following compulsory license fees for community radio stations for the performance of musical compositions in the ASCAP repertory:

1998	\$375
1999	\$390
2000	\$405
2001	\$420
2002	\$440

Once again, as in 1987 and 1992, this proposal is being made on a non-prejudicial and non-precedential basis, to resolve this matter without the necessity for any CARP hearings or other action. The annual compulsory license fees we are proposing are arbitrary, and do not reflect any assessment by any party of the

²No other participant in this proceeding represents these stations.

absolute or relative value of the right of performance of music in the ASCAP repertory by community radio stations. Accordingly, as we requested that the Tribunal recognize and as the Tribunal did then recognize in both the 1987 and 1992 proceedings, we again ask that the Librarian recognize this proposal in such terms and publish a final determination to that effect in the Federal Register.

The text of draft regulations embodying our proposal is attached as Appendix 'A'.


CONCLUSION

We ask that the Librarian adopt our joint proposal.

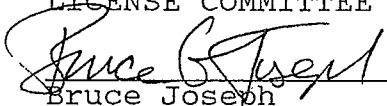
Respectfully submitted,

AMERICAN SOCIETY OF COMPOSERS,
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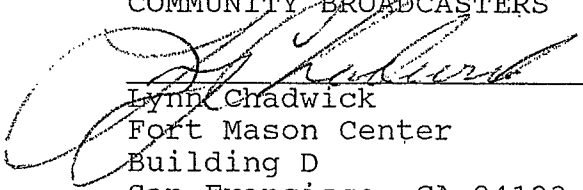
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Dated: September 26, 1997

APPENDIX A

§ 253.6 Performance of musical compositions by other public broadcasting entities.

(a) Scope. This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with National Public Radio.

(b) Voluntary license agreements. Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) Royalty rate. A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, in 1998, \$375; in 1999, \$390; in 2000 \$405; in 2001 \$420; in 2002, \$340.

(d) Payment of royalty rate. The public broadcasting entity shall pay the required royalty rate to ASCAP . . . not later than January 31 of each year.

(e) Records of use. A public broadcasting entity subject to this section shall furnish to ASCAP, . . . upon request, a music-use report during one week of each calendar year. ASCAP . . . shall not in any one calendar year request more than 5 stations to furnish such reports.